

1 ROB BONTA, State Bar No. 202668
2 Attorney General of California
2 TRACY L. WINSOR, State Bar No. 186164
Supervising Deputy Attorney General
3 COLLEEN R. FLANNERY, State Bar No. 297957
DANIEL M. FUCHS, State Bar No. 179033
4 Deputy Attorneys General
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 210-7827
Fax: (916) 327-2319
7 E-mail: Daniel.Fuchs@doj.ca.gov
Attorneys for Plaintiffs
8 *California Natural Resources Agency,*
California Environmental Protection Agency, and
9 *People of the State of California, ex rel. California*
Attorney General Rob Bonta

10

11

IN THE UNITED STATES DISTRICT COURT

12

FOR THE EASTERN DISTRICT OF CALIFORNIA

13

14 **THE CALIFORNIA NATURAL**
RESOURCES AGENCY, ET AL.

15

Plaintiffs,

16

17 v.
18

GINA RAIMONDO, ET AL.,

19

Defendants.

20

21

22

23

24

25

26

27

28

Case No. 1:20-cv-00426-DAD-EPG

**STIPULATION AND [PROPOSED]
ORDER REGARDING SCOPE AND
PROCEDURES FOR DEPOSITION AND
DISCOVERY OF LES GROBER AND
RECIPROCAL PRODUCTION OF
DEFENSE DECLARANT**

RECITALS

WHEREAS the California Natural Resources Agency, California Environmental Protection Agency, and the California Attorney General (California Plaintiffs) on November 23, 2021 filed a Declaration of Les Grober (ECF 223) in Support of Motion for Interim Injunctive Relief and Temporary Stay of Litigation (ECF 218) (Grober Declaration);

WHEREAS Defendant-Intervenors the Sacramento River Settlement Contractors (Settlement Contractors) advised on December 10, 2021, that they wished to depose Mr. Grober, and have emailed to counsel for the California Plaintiffs a deposition notice and subpoena but did not at that time personally serve Mr. Grober with the notice or subpoena;

WHEREAS Mr. Grober has been retained by the California Plaintiffs as an expert in this litigation to support their Motion for Interim Injunctive Relief and Temporary Stay of Litigation, and California Plaintiffs preserve their privileges and work product as to any potential role of Mr. Grober in the merits hearing in this case, should one become necessary, and object to disclosing further information regarding Mr. Grober;

WHEREAS the State Water Board is currently participating in litigation with or against, or administers water rights permits for, each and every Defendant-Intervenor in *CNRA v. Raimondo*, and, as such, has an interest in protecting its attorney-client, employment decisions, and deliberative process privilege and work product independent of those privileges and work product that may be asserted by California Plaintiffs and their counsel;

WHEREAS California Plaintiffs and the Settlement Contractors have met and conferred regarding the scope of deposition testimony in the above-captioned matter, *CNRA v. Raimondo* (Case No. 1:20-cv-00426-DAD-EPG) (*CNRA v. Raimondo*);

WHEREAS Federal Defendants maintain that discovery of any kind, including depositions, is inappropriate in this administrative record case, and reserve their right to object to reliance on any such discovery in future filings or the conducting of any further discovery in this matter, and Defendant-Intervenors maintain that discovery is appropriate when the Complaint raises citizen suit claims under the ESA (ECF 1, ¶ 38, etc.) as well as when the moving parties

1 have submitted and relied upon extra-record evidence to support their motions, and Defendant-
2 Intervenors reserve their rights to dispute any objections posed by Federal Defendants;

3 **WHEREAS** to avoid further consuming the parties' and the Court's time and resources on
4 potential discovery disputes and motion practice, and to provide a deposition setting consistent
5 with the current Covid-19 public health emergency, the parties have agreed to certain limitations
6 on the scope of expert-related discovery and testimony in this matter.

STIPULATION

8 The parties hereto, through their respective counsel of record, hereby stipulate to the
9 following regarding the scope of discovery and deposition testimony relating to Mr. Grober:

1. This deposition will be the sole discovery sought from and only deposition by any party of
any person submitting a declaration on behalf of California Plaintiffs in connection with
California Plaintiffs' Motion for Interim Injunctive Relief and Temporary Stay of
Litigation (ECF 218).
 2. Mr. Grober's deposition will be taken over an Internet-based platform such as Zoom, and
not in person.
 3. Mr. Grober's deposition is limited to "one day of 7 hours" (Fed. R. Civ. Proc. 30(d)(1)),
and limited in scope to questions regarding the Grober Declaration, including the bases
and qualifications supporting that testimony.
 4. Any responsive documents that may exist, except such documents as may be withheld
pursuant to objection, will be provided to Settlement Contractors' counsel via a file
exchange link provided by 1:00 p.m. on January 4, 2021, which will serve as a substitute
for providing paper copies at an in-person deposition. No further document demands
relating to Mr. Grober will be made in connection with this deposition.
 5. To the extent parties other than the Settlement Contractors wish to examine Mr. Grober at
the deposition, such questioning will be subject to the time and scope limits described in
paragraph 3 above, and the procedure set forth in paragraph 6, below.
 6. The procedure during the deposition, all of which shall be completed within the "one day
of 7 hours" contemplated above, shall be as follows:

- 1 a) Only one attorney for each party present at the deposition may examine Mr.
2 Grober at the deposition.
 - 3 b) When one party has concluded its examination, another party may begin.
 - 4 c) All parties other than the California Plaintiffs and the State Water Board must
5 conclude their examination of Mr. Grober no later than six hours after the
6 deposition commences on January 5. California Plaintiffs and/or State Water
7 Board may then conduct a re-direct of up to one-half hour regarding any subject on
8 which examination was conducted.
 - 9 d) Following the California Plaintiffs' examination, if any, counsel for other parties
10 may re-cross Mr. Grober up to a limit of an additional half-hour on the record.
 - 11 e) If counsel for the California Plaintiffs and/or State Water Board do not conduct a
12 re-direct, then any party that has already examined Mr. Grober may not ask any
13 further questions once its turn is over.
- 14 7. Settlement Contractors agree to make one declarant of the California Plaintiffs' choosing
15 available for deposition by California Plaintiffs, to the same extent and under the same
16 conditions that State Plaintiffs are making Mr. Grober available, on either January 12,
17 January 13, January 14, or January 18, 2022.
 - 18 8. All Intervenors agree that the State has a right to conduct discovery requests regarding
19 their oppositions to the State's Motion for Interim Injunctive Relief and Temporary Stay
20 of Litigation, consistent with the applicable Federal Rules of Civil Procedure and the
21 Eastern District Local Rules. Should attorneys for the State determine, after reviewing the
22 oppositions, that discovery from the Intervenors is warranted under those Rules and the
23 facts of this matter, the parties will promptly meet and confer to arrange for scheduling
24 any deposition(s) as expeditiously as practicable. It is anticipated that the Intervenors will
25 be able to produce the identified deponent(s), to the same extent and under the same
26 conditions that State Plaintiffs are making Mr. Grober available, within 5 business days of
27 receiving the request.

1 9. At their discretion, Counsel for the State Water Board may attend the deposition and may
2 assert objections to questions or testimony, to the extent necessary to protect or assert the
3 State Water Board's privileges, including privileged work product.

4 **IT IS SO STIPULATED.**

5 Dated: December 30, 2021

6 Respectfully submitted,

7 ROB BONTA
8 Attorney General of California
9 TRACY L. WINSOR
10 Supervising Deputy Attorney General

11 /s/Daniel M. Fuchs

12 DANIEL M. FUCHS
13 Deputy Attorney General
14 *Attorneys for Plaintiffs*
15 *California Environmental Protection*
16 *Agency, California Natural Resources*
17 *Agency, and People of the State of*
18 *California by and Through Rob Bonta,*
19 *Attorney General of the State of California*

20 DATED: December 17, 2021

21 TODD KIM
22 Assistant Attorney General
23 SETH M. BARSKY, Section Chief
24 S. JAY GOVINDAN, Assistant Section Chief
25 U.S. Department of Justice
26 Environment & Natural Resources Division

27 LESLEY LAWRENCE-HAMMER
28 Sr. Trial Attorney (DC Bar No. 982196)
29 Wildlife & Marine Resources Section
30 Tel: (303) 844-1368
31 Lesley.Lawrence-Hammer@usdoj.gov

32 /s/ Nicole M. Smith
33 NICOLE M. SMITH
34 Trial Attorney (CA Bar No. 303629)
35 Wildlife & Marine Resources Section
36 Tel: (202) 305-0368
37 Nicole.M.Smith@usdoj.gov

38 CLIFFORD E. STEVENS, Jr.
39 Sr. Trial Attorney (DC Bar No. 463906)
40 Wildlife & Marine Resources Section
41 Tel.: (202) 353-7548
clifford.stevens@usdoj.gov

1 EVE W. MCDONALD
2 Trial Attorney (CO Bar No. 26304)
3 Natural Resources Section
4 Tel: (303) 844-1381
5 Evelyn.Mcdonald@usdoj.gov

6
7
8 *Attorneys for Federal Defendants*

9 DATED: December 17, 2021

10 KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
11 A Professional Corporation

12 By: /s/Daniel J. O'Hanlon

13 Daniel J. O'Hanlon
14 *Attorneys for Defendant-Intervenors,*
15 *San Luis & Delta-Mendota Water Authority*
16 *and Westlands Water District*

17 DATED: December 17, 2021

18 PERKINS COIE LLP

19 By: /s/ Marc Bruner

20 MARC BRUNER
21 *Attorneys for Defendant-Intervenor*
22 *Contra Costa Water District*

23 DATED: December 17, 2021

24 Bartkiewicz, Kronick & Shanahan, PC

25 By: /s/Jennifer T. Buckman

26 Jennifer T. Buckman
27 *Attorneys for the City of Folsom and the City of*
28 *Roseville*

1 DATED: December 17, 2021

KAPLAN KIRSCH & ROCKWELL, LLP
By: /s/ Matthew G. Adams
MATTHEW G. ADAMS

3 *Attorneys for Friant Water Authority and*
4 *Arvin-Edison Water Storage District*

5
6
7 DATED: December 17, 2021

VAN NESS FELDMAN, LLP

8
9 By: /s/ Jenna R. Mandell-Rice
10 JENNA R. MANDELL-RICE,
11 *Attorney for Intervenor-Defendant The State Water*
Contractors

12 DATED: December 17, 2021

STOEL RIVES LLP

13 By: /s/ Elizabeth Ewens

14 ELIZABETH EWENS
15 Attorneys for Defendant-Intervenor SAN JUAN
16 WATER DISTRICT

17 DATED: December 17, 2021

18 By: /s/ Brittany K. Johnson
19 BRITTANY K. JOHNSON
20 SOMACH SIMMONS & DUNN
21 *Attorneys for Intervenor-Defendants Glenn- Colusa*
Irrigation District; Reclamation District No. 1004;
Conaway Preservation Group, LLC; David and
Alice te Velde Family Trust; Pelgar Road 1700,
LLC; Anderson-Cottonwood Irrigation District; City
of Redding; and Knights Landing Investors, LLC

22 DATED: October 14, 2021

23 By: /s/ Meredith E. Nikkel
24 MEREDITH E. NIKKEL
25 DOWNEY BRAND LLP
26 *Attorneys for Reclamation District No. 108, Sutter*
Mutual Water Company; Natomas Central Mutual
Water Company; River Garden Farms Water
Company; Pleasant Grove-Verona Mutual Water
Company; Pelger Mutual Water Company;
Meridian Farms Water Company; Henry D. Richter,
Et Al.; Howald Farms, Inc.; Oji Brothers Farm,
Inc.; Oji Family Partnership; Carter Mutual Water
Company; Windswept Land And Livestock
Company; Maxwell Irrigation District; Beverly F.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

*Andreotti, Et Al.; Tisdale Irrigation And Drainage
Company; Provident Irrigation District; Princeton-
Codora-Glenn Irrigation District; and Tehama-
Colusa Canal Authority*

DATED: December 17, 2021

PARIS KINCAID & WASIEWSKI, LLP

By: /s/ Timothy J. Wasiewski

TIMOTHY J. WASIEWSKI

Attorneys for Defendant/Intervenor
South San Joaquin Irrigation District

DATED: December 17, 2021

By: /s/ Timothy O'Laughlin

TIMOTHY O'LAUGHLIN

TIMOTHY O'LAUGHLIN, PLC

Attorneys for Intervenor-Defendant
Oakdale Irrigation District

ORDER

The above stipulation is adopted.

IT IS SO ORDERED.

Dated: January 5, 2022

Dale A. Joyd
UNITED STATES DISTRICT JUDGE